IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.1914 OF 1999

Mrs. Deepa Gourang Murdeshwar Katre
108, Temple View, C.H.S.
Behind Ram Mandir, Vartak Road
Virar(W), Dist: Thane. ..Petitioner

Vs.

1. The Principal
   Vadyavardhini Annasaheb Vartak
   College of Arts
   Kedarnath Malhotra College of Commerce
   E.S. Andrades College of Science
   Vasai Road, (W. Rly.)
   Tal: Vasai, Dist: Thane.

2. The Secretary
   Vidyavardhini, Vasai Road.

3. University of Bombay

4. The State of Maharashtra
   Education Department
   Mantralaya, Mumbai ..Respondents

Ms. S.V. Deshpande for Petitioner
Mrs. S.S. Bhende, A.G.P. for Respondent No.4
Mr. J.M. Chandankar for Respondent No.1
Mr. R.A. Rodrigues with Mr. B.V. Phadnis for Respondent No.3

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 13TH APRIL, 2005.

JUDGMENT (PER F.I. REBELLO, J.)

. Petitioner was appointed in the Kedarnath College of Commerce as a Lecturer on 22nd November, 1993 and was so working till the time the Petition was filed. The case of the Petitioner is that the Respondent College was advertising the post every

year and in view of the non-availability of Backward Class candidates, were appointing the Petitioner for a period of one year----. Petitioner has relied upon various letters of appointment. It is the Petitioner's case that considering various resolutions she addressed communication to College and University to de-reserve the post. No action was taken. The vacancy was existing from 1993. The Petitioner apprehended that once the post is advertised a third person would be appointed and her services will be terminated and consequently preferred the Petition praying for reliefs as set out therein. Rule was granted and also interim relief pursuant to which the College was restrained from advertising the post.

2. On behalf of the University affidavit has been filed by Mr. D. Kamble, Deputy Registrar, Special Cell, University of Mumbai. In that reference is made to the letter received from Respondent No.1 in terms of directions issued by this Court on 9th August, 2000. The State Government has taken decision to deserve the post of Lecturer in English. It is further pointed out that University sent letter dated 27th April, 2004 to Respondent No.1 to fill up the above mentioned post by advertisement. The Respondent College was to send draft advertisement to the University for

approval. The University has not yet received any information regarding draft advertisement with respect to the interchangeable clause which has to be issued in the sixth advertisement.

3. We have heard learned Counsel for the parties and also considered the resolution for filling up reserved posts of Backward Class. A perusal of the said resolution would disclose that in a post meant for reserved category no open candidate can be appointed. It is only in the event a backward class candidate is not available then a candidate belonging to open category can be appointed. Such an advertisement has to be issued on five occasions. It is the case of the Petitioner that it has been so issued. In the sixth year the advertisement has to be based on interchangeability. In other words if the candidate from the reserved category is not available it can be filled in from another reserved category. However, before doing this the College must forward the draft advertisement to the University for interchangeability before the advertisement is issued and it can be issued only after approval by the University.

. In the instant case that procedure had not been completed. The Petitioner however, is in the

employment of Respondent since the year 1993 i.e. for nearly twelve years. Considering the above we can dispose of the Petition by issuing following directions:-

(i). Respondent No.1 within four weeks from today to forward to Respondent No.2 a draft advertisement based on interchangeability. On the draft advertisement being received and after verifying the same and if earlier there had been five advertisement already issued the University to permit the Respondent No.1 to issue the advertisement based on interchangeability.

(ii). If on the advertisement being issued no candidate from reserved candidate is available, Respondents to permit the Petitioner to continue in the post presently held by her.

(iii). After the sixth advertisment, if no candidate belonging to the backward class is available, Respondent No.1 to send representation to Respondent no.3 to de-reserve the post. The University after complying with the procedure to forward the

same to Respondent No.4.

(iv). Respondent No.4 considering the clause for de-reservation and considering the judgment of this Court in Writ PetitionNo.1914 of 1999 dated 13th April, 2005 which has taken a view that it is not necessary that after de-reservation, that post must be re-advertised but it is open to the Government to relax the condition, to take the appropriate decision and communicate the same to Respondent No.3.

(v). The Petitioner pursuant to the sixth advertisement if no backward class candidate is selected to be continued and the Petitioner's services will not be terminated. If the order be adverse it is not to be acted upon for a period of twelve weeks after the communication of the decision of Respondent No.4, by Respondent No.1 to the Petitioner.

. Rule made absolute accordingly. There shall be no order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)